IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 226 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHARWAD MADAN LAKHA

Appearance:

MR KG SHETH, A.P.P. for Petitioner No. 1

MR MAHENDRA K PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/10/2001

ORAL JUDGEMENT

The respondent was prosecuted for theft of electrical energy from the Gujarat State Electricity Board and acquitted by the learned Judicial Magistrate (F.C.), Bhanvad, Dist.Jamnagar vide judgement dated January 4, 1988 rendered in Criminal Case No.237 of 1984.

The acquittal of the respondent is the subject-matter of challenge in the present appeal which is filed under Section 378 of Code of Criminal Procedure, 1973.

2. Heard the learned counsel for the parties.

3. One of the grounds of acquittal mentioned by the learned Magistrate is that the respondent was prosecuted of the offence punishable under Section 379 of the I.P.C. and not of the offence punishable under Section 39 of the Indian Electricity Act, 1910 and, therefore, the prosecution should fail. In Avtar Singh V/s. State of Punjab, AIR 1965 SC 666, the Supreme Court has ruled that dishonest abstraction of electricity mentioned in Section 39 of the Act cannot be an offence under the I.P.C. for under it alone it is not an offence. What is laid by the Supreme Court in the said decision is that the dishonest abstraction is by Section 39 made a theft within the meaning of I.P.C., that is, an offence of the variety described in the Code as theft. After disagreeing with the view taken by some of the High Courts that the theft of electrical energy was not an offence against the Act, the Supreme Court has held that since the abstraction of electrical energy is by Section 39 to be deemed to be an offence under the I.P.C., the fiction raised in Section 39 of the Indian Electricity Act must be followed to the end and the offence so created would entail the punishment mentioned in the Code for that offence. According to the Supreme Court, the punishment is not under the Code itself for under it abstraction of energy is not an offence at all.

4. In view of the principles laid down by the Supreme Court in the decision quoted above, I am of the opinion that the respondent ought to have been prosecuted of the offence punishable under Section 39 of the Indian Electricity Act, 1910 and not for commission of offence under Section 379 of the I.P.C. Further, as held by the learned Magistrate, no reliable evidence has been adduced by the prosecution to establish that the respondent had dishonestly abstracted electrical energy. Even the place of incident also is not satisfactorily established by the prosecution. Under these circumstances, the view expressed by the learned Magistrate which is not found to be perverse or illegal cannot be interfered with, in the present acquittal appeal. The learned Additional Public Prosecutor has failed to persuade me to take the view different from the one taken by the learned Magistrate. Therefore, the acquittal appeal is liable to be dismissed.

For the forgoing reasons, the appeal fails and is dismissed.

Muddamal to be disposed of in terms of the directions given by the learned Magistrate in the impugned judgment.

Sd/-

(J.M.Panchal, J)

'Bhavesh'